Supreme Court, U.S.
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No. 02-391

IN THE

Supreme Court of the United States

MARVIN D. WASHINGTON,

Petitioner,

v.

WEARY E. MCFADDEN and SHOWNIKA A. MCCAULEY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MARYLAND COURT OF APPEALS

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE PETITION

The ruling of the Maryland appellate courts are consistent with the Maryland Rules of Civil Procedure and Maryland case law. Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

I. Maryland Law Provided Petitioner an Automatic Right of Appeal to the Court of Special Appeals Following the June 6, 2000 Jury Trial.

Pursuant to Maryland law, the only method of securing review by the Court of Special Appeals is by the filing of a Notice of Appeal within thirty days after entry of the judgment or order from which the appeal is taken. *See* Maryland Rule 8-201, 8-202.[1] Maryland Rule 8-205 requires the filing of an Information Report by the appealing party within ten days of the filing of the appeal. It is undisputed that Petitioner filed a Notice of Appeal on July 7, 2000. It is further undisputed that Petitioner did not file a Prehearing Information Report. The Maryland Court of Special Appeals dismissed the appeal filed on July 7, 2000 due to Petitioner's failure to file the Prehearing Information Report. (Pet. App. 4).

Maryland Rules of Civil Procedure 8-602 provide a mechanism for an appellant who has had his appeal dismissed for any reason, including a failure to file a Prehearing Information sheet to seek reconsideration from the appellate court as to the dismissal. Petitioner never filed any such motion for reconsideration. Petitioner did not appeal the Court of Special Appeals' dismissal of his appeal.

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1. Respondents provide in their Appendix the text of Maryland Rules cited in their Brief in Opposition with the exception of those rules set forth in Petitioner's Brief and/or Petitioner's Appendix.

Petitioner's position is that the appeal filed on July 7, 2000 was flawed because it was essentially filed too early. That is to say the Notice of Appeal was filed prior to the judgment being entered in the docket by the Circuit Court for Prince George's County.

In light of Maryland Rule 8-602(d), the filing of a Notice of Appeal by Petitioner on June 7, 2000, thirteen days before the clerk's office entered the judgment on the docket is irrelevant. Maryland Rule 8-602(d) provides as follows:

> A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

See also Byrum v. Horning, 360 Md. 23 (2000).

Maryland Rule 8-602(d) clearly protects the original appeal filed by Petitioner from being dismissed as premature. The rule essentially deems the appeal to have been noted as of July 20, 2000. As such, under Maryland law, the Notice of Appeal filed by Petitioner on July 7, 2000 was not flawed in any way.

As the Court of Special Appeals noted, Petitioner unilaterally concluded that his Notice of Appeal filed on July 7, 2000 was flawed as premature. (App. 7). Petitioner argues he could not timely file the Prehearing Information Report because he did not have a copy of the Judgment. In its ruling, *sub judice*, the Court of Special Appeals points out that an Appellant is asked to file the Prehearing

Information Report with the information available. No effort to file even a partially completed Prehearing Information Report was made by Petitioner. Waiting for a copy of the Judgment does not excuse an Appellant from the duty to file the Prehearing Information sheet within ten days of the Notice of Appeal.

Moreover, as indicated above, Maryland Rule 8-602 deems the appeal to have been noted on July 20, 2000. That is the date the clerk's office entered judgment on the docket. Petitioner had ten days from July 20, 2000 to file the Prehearing Information sheet. Petitioner did not do so. Petitioner presents substantial discussion as to the fact the clerk's office did not mail the July 20, 2000 Judgment notice to Mr. Palmer. Again, however, Petitioner did not use Maryland Rule 8-602 to seek reconsideration of the dismissal of the appeal filed on July 7, 2000, in light of the fact that Mr. Palmer did not receive a copy of the July 20, 2000 judgment notice. Additionally, Petitioner did not note an appeal from the Court of Special Appeal's ruling.

At no time did Petitioner withdraw the appeal noted on July 7, 2000. As discussed above, this appeal was not premature. Respondents never sought to have the Notice of Appeal dismissed as premature. The Court of Special Appeals of Maryland did not dismiss the Notice of Appeal filed on July 7, 2000 as untimely or premature, nor would such actions by the Respondents or the court of Special Appeals have been proper. Maryland Rule 8-602(d) clearly protected the Notice of Appeal filed on July 7, 2000 by Petitioner from dismissal as premature.

Maryland law entitles Petitioner to one appeal. Petitioner noted an appeal. Petitioner never withdrew that appeal.

Petitioner did not comply with the procedures for continuing to perfect that appeal. Petitioner's appeal was subsequently dismissed. No challenge to the dismissal of that appeal was made by Petitioner. Rather, the Petitioner filed a motion with the circuit court asking that a judgment be reissued in light of the fact that Mr. Palmer did not receive a copy of the judgment entered on the docket on July 20, 2000. Petitioner presents a lengthy discussion regarding the clerk's failure to mail a copy of the July 20 docket entry to Mr. Palmer. Respondents submit that this discussion is beside the point. The dismissal of Petitioner's appeal noted on July 7, 2000 was proper and fully in conformity with Maryland law. Petitioner has failed to set forth any authority to support his position that he is entitled to a second appeal. All rulings issued in this case by the Court of Special Appeals and the Court of Appeals do not conflict with federal law or case law from other jurisdictions.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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APPENDIX

APPENDIX — TEXT OF MARYLAND RULES

Rule 8-201. Method of securing review—Court of Specials Appeals.

(a) By notice of appeal. Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket.

Rule 8-202. Notice of appeal—Times for filing.

(a) Generally, Except as other provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.